

DECISION



THE COMPTROLLER GENERAL OF THE UNITED STATES

WASHINGTON, D. C. 20548

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FILE: B-184384

DATE: December 15, 1975

MATTER OF: Baldwin Ambulance Service, Inc.; Metro-Medic
Ambulance Service, Inc.

DIGEST:

Bidder's incorporation for purpose of providing ambulance service could be considered to satisfy "regularly established" requirement in IFB qualifications clause and determination of bidder's responsibility on evidence in support of financial responsibility, equipment and personnel criteria in qualifications clause is reserved to contracting officer.

On July 29, 1975, our Office issued an advanced decision (B-184384) pursuant to a request from the Veterans Administration (VA) in connection with invitation for bids (IFB) No. 423-15-76.

The IFB was for furnishing ambulance services to beneficiaries of the VA, Jackson, Mississippi, during fiscal year 1976. The low bidder under the IFB was Metro-Medic Ambulance Service, Inc. (Metro-Medic). Baldwin Ambulance Service, Inc. (Baldwin), protested consideration of Metro-Medic's bid to the contracting officer who forwarded the matter to our Office requesting an advance decision.

In our decision of July 29, 1975, we found that the bid of Metro-Medic could be considered for award notwithstanding its failure to supply with its bid a list of the equipment it intended to use during performance because such information related to the responsibility of the bidder, not the responsiveness of the bid and, therefore, the information could be submitted after bid opening. Also, the failure of Metro-Medic to possess a Certificate of Public Convenience issued by the City of Jackson, Mississippi, was not a bar to an award to the firm as such matters are between the local governmental unit and the contractor as to whether the contractor must comply where, as here, the IFB does not require a specific license but only employs general language, i.e., "bidder shall meet all requirements of Federal, State or City codes."

Subsequent to this decision, the VA determined that Metro-Medic was a responsible bidder and awarded the contract to it.

Baldwin has again protested the award to Metro-Medic to the VA which has forwarded the matter to our Office for further consideration.

Baldwin has raised again the two grounds considered in our prior decision. As regards the license requirement, Baldwin states that after the award the City Council of Jackson, Mississippi, denied Metro-Medic's request for the certificate on October 8, 1975, and that by performing under the contract it is in violation of the city code. Based on our previous holding, this is not dispositive of the issue because the fulfillment of a local license requirement is a matter for resolution between the contractor and the local governmental unit and we reaffirm our prior decision on this point. Moreover, we have been advised that Metro-Medic on November 26, 1975, was issued the certificate by the city council.

Also, Baldwin states that it has learned that Metro-Medic did not purchase the ambulances for use under this contract until 3 months after bid opening. Again, this does not alter our prior decision as the matter of the contractor's equipment is one of responsibility, which is to be resolved at the date of award, not bid opening.

Finally, Baldwin contends that Metro-Medic was not "regularly established" as required by the IFB when it submitted its bid but was merely a "corporate shell" and had no experience in operating an ambulance service and therefore, should have been found non-responsible.

As a general rule, our Office will not review an agency's affirmative determination of a bidder's responsibility unless there is an allegation of fraud or the solicitation contains specific and objective responsibility criteria. Yardney Electric Corporation, 54 Comp. Gen. 509, 74-2 CPD 376. We believe the requirement under protest here meets the test of a definitive criterion and, therefore, we will review the determination of the contracting officer.

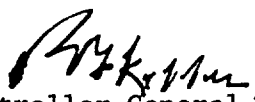
The pertinent portion of the IFB provided:

"2. QUALIFICATIONS: a. Proposals will be considered only from bidders who are regularly established in the business called for and who are financially responsible and have the necessary equipment and personnel to furnish service in the volume required for all the items under this contract. Successful bidder shall meet all requirements of Federal, State or City codes regarding operation of this type of service."

The record before our Office shows that a preaward survey was conducted by the contracting officer on Metro-Medic prior to award. During that survey, the contracting officer found that the public records revealed that Metro-Medic was incorporated in December 1974 for the purpose of providing ambulance service. Further, the contracting officer found that Metro-Medic was financially responsible, had made deposits to purchase ambulances and radio equipment, had sufficient insurance and had the knowledge (technical expertise) necessary to perform the contract. The contracting officer noted that one of the officers of Metro-Medic had been associated with ambulance service operations for a number of years and was familiar with the field. Based on the foregoing, the contracting officer determined Metro-Medic to be a responsible bidder.

As regards the term in the IFB, "regularly established," we believe that since Metro-Medic had been incorporated in December 1974 for the purpose of providing ambulance service that could be considered to satisfy the requirement. Further, the contracting officer considered evidence regarding the bidder's financial responsibility, equipment and personnel as provided in the qualifications clause. The determination of the bidder's responsibility based on the evidence is reserved to the contracting officer. See Yardney Electric Corporation, supra.

Therefore, the protest of Baldwin is denied.


Deputy Comptroller General
of the United States